

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

## UNITED STATES DISTRICT COURT

for the

Salvatore Brunetti

07781-062

FCI Fort Dix

Box 2000

J.B. MDL, NJ 08640

Petitioner

v.

David Ortiz, Warden

FCI Fort Dix, NJ

Respondent

(name of warden or authorized person having custody of petitioner)

RECEIVED

DEC 26 2018

AT 8:30

M  
WILLIAM T. WALSH, CLERK

Case No.

(Supplied by Clerk of Court)

December 19, 2018.

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

## Personal Information

1. (a) Your full name: Salvatore Brunetti  
 (b) Other names you have used: N/A

2. Place of confinement:  
 (a) Name of institution: FCI Fort Dix  
 (b) Address: Box 2000, J.B. MDL,  
Fort Dix, New Jersey 08640  
 (c) Your identification number: 07781-062

3. Are you currently being held on orders by:  
 Federal authorities    State authorities    Other - explain:

4. Are you currently:  
 A pretrial detainee (waiting for trial on criminal charges)  
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: USDC D.PA/Philadelphia

(b) Docket number of criminal case: # 94-CR-00127 (EP.PA/Philadelphia)

(c) Date of sentencing: 5-8-1997

Being held on an immigration charge

Other (explain): N/A

**Decision or Action You Are Challenging**

5. What are you challenging in this petition:

How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention

Immigration detention

Detainer

The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

Disciplinary proceedings

Other (explain): \_\_\_\_\_

\_\_\_\_\_

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: FCI Fort Dix, Box 2000  
J.B. MDL, NJ 08640

(b) Docket number, case number, or opinion number: # \_\_\_\_\_

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

BP-11 Remedy ID # 925134-A1 &amp;

BP-11 Remedy ID # 939703-A1

(d) Date of the decision or action: April 26, 2018

**Your Earlier Challenges of the Decision or Action**

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

 Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: BOP /BP-9

(2) Date of filing: 2018

(3) Docket number, case number, or opinion number: 925134/939703

(4) Result: Denied

(5) Date of result:

(6) Issues raised: BOP wrongly categorized my custody/security level as a public safety factor &amp; greatest severity, precluding my ability to further program in a minimum security placement.

(b) If you answered "No," explain why you did not appeal: N/A

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes

No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: BOP / BP-10

(2) Date of filing: 2018

(3) Docket number, case number, or opinion number: 925134/939703

(4) Result: Denied

(5) Date of result: 2018

(6) Issues raised: Same as supra, paragraph 7

(b) If you answered "No," explain why you did not file a second appeal: N/A

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes

No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: BOP / BP-11

(2) Date of filing: 2018

(3) Docket number, case number, or opinion number: 925134/939703

(4) Result: Denied

(5) Date of result: April 26, 2018

(6) Issues raised: Same as paragraph 7

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) If you answered "No," explain why you did not file a third appeal: N/A

\_\_\_\_\_

\_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes  No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes  No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes  No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: Because this issue concerns jurisdiction as required under Rumfeld v. Padilla, Brunetti is required to file his Section 2241 where he is currently living, D.NJ / Camden Division jurisdiction.

#### 11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes  No

If "Yes," provide:

(a) Date you were taken into immigration custody: \_\_\_\_\_

(b) Date of the removal or reinstatement order: \_\_\_\_\_

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes  No

N/A

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

Yes  No

If "Yes," provide:

(1) Name of court: N/A

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

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(4) Result: \_\_\_\_\_  
(5) Date of result: \_\_\_\_\_  
(6) Issues raised: N/A  
\_\_\_\_\_  
\_\_\_\_\_

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes       No

If "Yes," provide: N/A

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** The BOP committed reversible legal error for failing to follow prevailing Supreme Court cases: DiMaya & Johnson II Deeming Brunetti's conspiracy to murder charges are now Deemed non-violent, thus BOP should not have placed a greatest severity and public safety

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(a) Supporting facts (*Be brief. Do not cite cases or law.*):

factor on Brunetti's prison record & also performed corrective action by removing both greatest severity & public safety factors from his prison record.

(b) Did you present Ground One in all appeals that were available to you?

Yes

No

**GROUND TWO:** In light of Ground One, Respondents failed to apply the public safety factor & greatest severity waiver as found in BOP's very own policy statement 5100.08 paragraph (5) at page 58, which allows the BOP/Respondents/Warden Ortiz to facilitate a public

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

safety factor waiver; enclosed see Exhibit #            in support, and the respondents intentionally failed to do so which violated Brunetti's 5th Amendment's Due Process.

(b) Did you present Ground Two in all appeals that were available to you?

Yes

No

**GROUND THREE:** N/A

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Three in all appeals that were available to you?

Yes

No

**GROUND FOUR:**

(a) Supporting facts (Be brief. Do not cite cases or law.):

N/A

(b) Did you present Ground Four in all appeals that were available to you?

Yes       No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

**Request for Relief**

15. State exactly what you want the court to do: For all of the above specifically stated reasons, Brunetti most respectfully requests the following relief from this Honorable Court:

Deem, Brunetti's 28 U.S.C. §2241 as meritorious;

Deem, Brunetti is actually innocent of being categorized as a Greatest Severity, Public Safety Factor & 2 Point Enhancement for violence are doomed in light of Johnson I & Johnson II & DiMaya, *supra*;

Order, the Respondents to correct the above inaccurate prison record of Brunetti by precluding the depiction of Greatest Severity, Public Safety Factor & 2 Point Enhancement for violence from Brunetti's prison custody & security classification.

**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12-19-2018

Salvatore Bennetti

*Signature of Petitioner*

Salvatore Bennetti

*Signature of Attorney or other authorized person, if any*

Signed under

28 U.S.C. 31046

Under penalties of

perjury the above

& following to

be true, correct

& complete.

PROSe.